

AGREEMENT FOR SERVICES
(National Sign Plazas, Inc. Wayfinding Sign Program)

This AGREEMENT made this 6th day of December between:

City: City of Stephenville, Texas, having a principal place of business at
298 West Washington Street, Stephenville, Texas 76401

and Consultant: National Sign Plazas, Inc., a California corporation, having a principal
place of business at 2202 West Huntington Drive, Tempe, AZ 85282.

ARTICLE 1. TERM OF AGREEMENT

This Agreement will become effective on December 6, 2022 ("Effective Date") and will continue in effect through December 31, 2023 unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the parties that Consultant is an independent contractor and not an employee, agent, joint venturer or partner of City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between City and Consultant or any employee or agent of Consultant. Both parties acknowledge that Consultant is not an employee for state or federal tax purposes. Consultant shall not be entitled to any of the rights or benefits afforded to City's employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. Consultant shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONSULTANT

A. Specific Services

Consultant agrees to perform the "Services" as outlined in Exhibit A ("Specific Provisions") and Exhibit B ("Scope of Services"), subject to the payment terms and conditions described Exhibit C ("Milestone Schedule").

B. Method of Performing Services

Consultant shall determine the method, details and means of performing the above-described Services. City shall have no right to, and shall not, control the manner or determine the method of accomplishing Consultant's Services.

C. Employment of Assistants

Consultant may, at the Consultant's own expense, employ such assistants as Consultant deems necessary to perform the Services required of Consultant by this Agreement, subject to the prohibition against assignment and subcontracting contained in Article 5 below. City may not control, direct, or supervise Consultant's assistants in the performance of those Services. Consultant assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholding.

D. Place of Work

Consultant shall perform the Services required by this Agreement at any place or location and at such times as Consultant shall determine is necessary to properly and timely perform Consultant's Services.

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the Services to be performed by Consultant, City agrees to pay Consultant a sum of Forty-Five Thousand Dollars (\$45,000) ("Fixed Price") for the Services described in Exhibit C, and as and when set forth in Exhibit D ("Payment Schedule"). In no event however shall the total compensation paid to Consultant exceed the Fixed Price, unless approved by City in a written authorization.

B. Invoices

Consultant shall submit invoices for all Services rendered.

C. Payment

Payment of the Fixed Price shall be due according to the payment schedule set forth in Exhibit D. No payment will be made unless Consultant has first provided City with a written receipt of invoice describing the work performed and any approved direct expenses (as provided for in Exhibit A, Section IV) incurred during the preceding period. If City objects to all or any portion of any invoice, City shall notify Consultant of the objection within thirty (30) days from receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute.

D. Expenses

Consultant shall be responsible for all costs and expenses incident to the performance of Services for City, including but not limited to, all costs of equipment used or provided by Consultant, all fees, fines, licenses, bonds or taxes required of or imposed against Consultant and all other of Consultant's costs of doing business. City shall not be responsible for any expenses incurred by Consultant in performing Services for City, except for those expenses constituting "direct expenses" referenced on Exhibit A.

ARTICLE 5. OBLIGATIONS OF CONSULTANT

A. Tools and Instrumentalities

Consultant shall supply all tools and instrumentalities required to perform the Services under this Agreement at its sole cost and expense. Consultant is not required to purchase or rent any tools, equipment or Services from City.

B. Workers' Compensation

Consultant agrees to provide workers' compensation insurance for Consultant's employees and agents and agrees to hold harmless, defend with counsel acceptable to City and indemnify City, its officers, representatives, agents and employees from and against any and all claims, suits, damages, costs, fees, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys' fees, arising out of any injury, disability, or death of any of Consultant's employees.

C. Insurance.

In addition to any other obligations under this Agreement, Consultant shall, at no cost to City, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof; and (b) Professional Liability Insurance (Errors & Omissions) with a minimum coverage of \$1,000,000 per occurrence and aggregate. As a condition precedent to City's obligations under this Agreement, Consultant shall furnish evidence of such coverage (naming City, its officers and employees as additional insureds on the Comprehensive Liability insurance policy referred to in (a) immediately above) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

D. Assignment

Notwithstanding any other provision of this Agreement, neither this Agreement nor any duties or obligations of Consultant under this Agreement may be assigned or subcontracted by Consultant without the prior written consent of City, which City may withhold in its sole and absolute discretion.

E. State and Federal Taxes

As Consultant is not City's employee, Consultant shall be responsible for paying all required state and federal taxes. Without limiting the foregoing, Consultant acknowledges and agrees that:

- City will not withhold FICA (Social Security) from Consultant's payments;
- City will not make state or federal unemployment insurance contributions on Consultant's behalf;
- City will not withhold state or federal income tax from payment to Consultant;
- City will not make disability insurance contributions on behalf of Consultant;

- City will not obtain workers' compensation insurance on behalf of Consultant.

ARTICLE 6. OBLIGATIONS OF CITY

A. Cooperation of City

City agrees to respond to all reasonable requests of Consultant and provide access, at reasonable times following receipt by City of reasonable notice, to all documents reasonably necessary to the performance of Consultant's duties under this Agreement.

B. Assignment

City may assign this Agreement or any duties or obligations thereunder to a successor governmental entity without the consent of Consultant. Such assignment shall not release Consultant from any of Consultant's duties or obligations under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT

A. Sale of Consultant's Business/ Death of Consultant.

Consultant shall notify City of the proposed sale of Consultant's business no later than thirty (30) days prior to any such sale. City shall have the option of terminating this Agreement within thirty (30) days after receiving such notice of sale. Any such City termination pursuant to this Article 7.A shall be in writing and sent to the address for notices to Consultant set forth in Exhibit A, Subsection V.H., no later than thirty (30) days after City's receipt of such notice of sale.

If Consultant is an individual, this Agreement shall be deemed automatically terminated upon death of Consultant.

B. Termination by City for Default of Consultant

Should Consultant default in the performance of this Agreement or materially breach any of its provisions, City, at City's option, may terminate this Agreement by giving written notification to Consultant. For the purposes of this section, material breach of this Agreement shall mean Consultant's repeated failure to professionally and/or timely perform any of the Services contemplated by this Agreement within a reasonable period of time after receiving a written notice of such breach from City.

C. Termination for Failure to Make Agreed-Upon Payments

Should City fail to pay Consultant all or any part of the compensation set forth in Article 4 of this Agreement on the date due, then if and only if such nonpayment constitutes a default under this Agreement, Consultant, at the Consultant's option, may terminate this Agreement if such default is not remedied by City within thirty (30) days after demand for such payment is given by Consultant to City.

ARTICLE 8. GENERAL PROVISIONS

A. Amendment & Modification

No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto.

B. Americans with Disabilities Act of 1990

Throughout the term of this Agreement, the Consultant shall comply fully with all applicable provisions of the Americans with Disabilities Act of 1990 (“the Act”) in its current form and as it may be amended from time to time. Consultant shall also require such compliance of all subcontractors performing work under this Agreement, subject to the prohibition against assignment and subcontracting contained in Article 5 above.

C. Attorneys’ Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys’ fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

D. Captions

The captions and headings of the various sections, paragraphs and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

E. Conflict of Interest

Consultant certifies that to the best of its knowledge, no City employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of Consultant and that no person associated with Consultant has any interest that would constitute a conflict of interest in any manner or degree as to the execution or performance of this Agreement.

F. Entire Agreement

This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of Services by Consultant for City and contains all the covenants and agreements between the parties with respect to the rendering of such Services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversation with any officer, agent or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any

documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon City.

G. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of laws principles.

H. Notices

Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in Exhibit A, Section V.H. but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed delivered as of actual receipt; mailed notices will be deemed delivered as of three (3) days after mailing.

I. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

J. Time of the Essence

All dates and times referred to in this Agreement are of the essence.

K. Waiver

Consultant agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

Executed at _____, _____, on the date and year first above written.

Consultant:

National Sign Plazas, Inc.

City:

CITY OF STEPHENVILLE

By: _____

Name: Grant Hayzlett

Title: President

By: _____

Name:

Title:

Taxpayer

Identification Number 77-0471997

ATTEST:

EXHIBIT A

SPECIFIC PROVISIONS

I. PROJECT MANAGER

Consultant shall provide the Services indicated on the attached Exhibit B, Scope of Services (“Services”). To accomplish that end, Consultant agrees to assign Andrew Fernandez, Vice President, who will act in the capacity of Project Manager, and who will personally direct such Services.

Except as may be specified elsewhere in this Agreement, Consultant shall furnish all technical and professional Services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to complete the Services in accordance with the terms of this Agreement.

II. NOTICE TO PROCEED/COMPLETION OF SERVICE

A. NOTICE TO PROCEED

Consultant shall commence the Services upon delivery to Consultant of a written “Notice to Proceed”, which Notice to Proceed shall be in the form of a written communication from designated City contact person(s). Notice to Proceed may be in the form of e-mail, fax or letter authorizing commencement of the Services. For purposes of this Agreement, Andrew Fernandez, Vice President and Justin Arellano Project Manager, shall be the designated City contact person(s). Notice to Proceed shall be deemed to have been delivered upon actual receipt by Consultant or if otherwise delivered as provided in the Section V.H. (“Notices”) of this Exhibit A.

B. COMPLETION OF SERVICES

When City determines that Consultant has completed all of the Services in accordance with the terms of this Agreement, City shall give Consultant written Notice of Final Acceptance. Consultant may request this determination of completion when, in its opinion, it has completed all of the Services as required by the terms of this Agreement and, if so requested, City shall make this determination within two (2) weeks of such request, or if City determines that Consultant has not completed all of such Services as required by this Agreement, City shall so inform Consultant within this two (2) week period.

III. PROGRESS SCHEDULE

The extent of the work of Consultant included within the Fixed Price will be as set forth in the attached Exhibit B and Exhibit C.

IV. PAYMENT OF FEES AND DIRECT EXPENSES

Payments shall be made to Consultant as provided for in Article 4 of this Agreement.

Direct expenses are charges and fees not included in Exhibit B. City shall be obligated to pay only for those direct expenses which have been previously approved in writing by City. Consultant shall obtain written approval from City prior to incurring or billing of direct expenses.

Copies of pertinent financial records, including invoices, will be included with the submission of billing(s) for all direct expenses.

V. OTHER PROVISIONS

A. STANDARD OF WORKMANSHIP

Consultant represents and warrants that it has the qualifications, skills and licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Consultant's representations and warranties regarding its skills, qualifications and licenses. Consultant shall perform such Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline as Consultant.

Any plans, designs, specifications, estimates, calculations, reports and other documents furnished under this Agreement shall be of a quality reasonably acceptable to City. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar purposes.

B. RESPONSIBILITY OF CONSULTANT

Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement. Consultant shall not be responsible for the accuracy of any project or technical information provided by the City. The City's review, acceptance or payment for any of the Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable to City in accordance with applicable law for all damages to City caused by Consultant's negligent performance of any of the Services furnished under this Agreement.

C. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

City, through its authorized employees, representatives or agents, shall have the right, at any and all reasonable times, to audit the books and records (including, but not limited to, invoices, vouchers, canceled checks, time cards, etc.) of Consultant for the purpose of verifying any and all charges made by Consultant in connection with this Agreement. Consultant shall maintain for a minimum period of three (3) years (from the date of final payment to Consultant), or for any longer period required by law, sufficient books and records in accordance with standard accounting practices to establish the correctness of all charges submitted to City by Consultant, all of which shall be made available to City at the City's offices within five (5) business days after City's request.

- D. [Intentionally Omitted]
- E. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Consultant have the authority or power to pledge the credit of City or incur any obligation in the name of City.

F. OWNERSHIP OF MATERIAL.

Work Product. All drawings, specifications and other documents and electronic data furnished by Consultant to City under the Contract Documents (“Work Product”) are deemed to be “Instruments of Service” and Consultant shall retain the ownership and property interests therein, including the copyrights thereto.

City’s Limited License After Completion. City shall have a license to use the Work Product in connection with City’s ownership, use, and occupancy of the land and the improvements comprising the project contemplated by the Services following the completion of the project, conditioned on City’s express understanding that such use of the Work Product is, except to the extent Consultant is involved in such use, at City’s sole risk and without liability or legal exposure to Consultant or anyone working by or through Consultant, including design consultants of any tier. In its understood and agreed in this respect that the City may use the Work Product (including without limitation Work Product prepared by Consultant, or Consultant’s subcontracted architects and consultants), for construction, reconstruction, or renovations of and additions to said buildings and improvements (including tenant improvements), and the City may permit qualified professionals to reproduce all or portions of the Work Product (including the design embodied in that Work Product) for incorporating into renovations of or additions to the buildings and property if those professionals assume all responsibility for the resulting instruments of service and all references to the Consultant and the Consultant’s consultants are removed from the resulting instruments of service.

G. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

H. NOTICES.

Notices are to be sent as follows:

City:	298 West Washington Street Stephenville, TX 76401
Consultant:	2202 West Huntington Drive Tempe, AZ 85282

EXHIBIT B

SCOPE OF SERVICES

The following lists have been provided to illustrate a sampling of services that are generally provided by Consultant in each of the phases. This list, however, is not meant to be construed as a comprehensive list of services nor is it meant to be construed as a sequential order of actions.

Design Phase: Design and Related Consulting Services

SYSTEM DESIGN

Design the wayfinding sign system and the associated elements. This includes the contemplative and thematic design of signs, furniture, sculpture, landscaping, and/or similar elements that will be included in the finished wayfinding system. Consultant agrees to present multiple concepts and ideas that are relevant to City's expressed interest(s).

PLANNING

Plan the strategic placement of each element of the program. This includes the creation of maps, site plans and the like that will identify set-backs, exact locations and the connectivity of the system as a whole. Consultant shall create the maps in a format that they deem most appropriate to the project.

PROGRAMMING

Develop message schedule and orientation of directional routes. This includes the organization, placement, font characteristics, and other actions associated with the system's content. Some programming elements may be graphic in nature and others may be text. The development of unique or common logo elements may also be required here.

CONSTRUCTION PREPARATION

Develop construction documents for each program element. This includes the development of scale drawings that identify the form and type of construction necessary to create the signage and other wayfinding elements. This may also include field analyses that identify problems or requirements with grading, soil or the like.

MEETINGS

Meet with interested parties such as City staff, chamber of commerce, business community and the like to present progress reports or final determinations. This will include the presentation of planned events, progress reports, conflicts, delays, changes or any other action that will affect the development of the City's wayfinding system. Consultant may produce reports or samples if necessary.

FINAL PRESENTATION

Consultant shall host a final presentation that will conclude the Design phase overall. At this presentation Consultant shall present the City with the Wayfinding Manual. Said manual will include and all of the work associated with the Design Phase and RFP document(s) if necessary.

EXHIBIT C

CONSULTANT'S WORK/ALLOCATION OF FEE(S)

Consultant shall provide a wayfinding sign program to City generally in accordance with the program sequence and elements outlined in the attached Schedule C-1, entitled *Developing Your Wayfinding Program*.

City has committed to pay Forty-Five Thousand Dollars (\$45,000) ("Fixed Price") to Consultant, which shall be invoiced to City based upon Consultant's generally applicable fee schedule for the Design Phase. City acknowledges that the Fixed Price shall cover an initial design phase as referenced in Exhibit B – *Design Phase*. At the completion of the Design Phase, Consultant shall provide a final design services invoice to City. City acknowledges that to the extent that the Design Phase is prolonged or complex due to site conditions or the City's requirements, that less credit will be available to apply to subsequent Phases.

In any event, City shall pay Consultant the full amount of the Fixed Price. Consultant cannot guaranty that the Fixed Price will accomplish a particular result given the variety of factors, elections, and site constraints to be presented during the Design Phase. Consultant shall receive the written authorization of City prior to delivering services that would cause the cost of Consultant's work to exceed the Fixed Price.

EXHIBIT C

PAYMENT SCHEDULE

<u>Payment Date</u>	<u>Payment Amount</u>
30 Days after Agreement date	\$20,000
Completion of thematic design and associated elements	\$10,000
Completion of planning and associated tasks	\$10,000
30 Days after final acceptance of wayfinding manual	\$5,000
Total:	\$45,000